Supreme Court, U.S.
FILED
FEB 19 1997
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(12)

No. 96-511

In the Supreme Court of the United States

OCTOBER TERM, 1996

JANET RENO, ATTORNEY GENERAL
OF THE UNITED STATES, *ET AL.*,
Appellants,

v.

AMERICAN CIVIL LIBERTIES UNION, *ET AL.*,
Appellees.

On Appeal from the United States District Court for the
Eastern District of Pennsylvania

BRIEF OF *AMICI CURIAE* AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, *ET AL.* IN SUPPORT OF APPELLEES

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57 pp

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LIST OF AMICI CURIAE:

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AMERICAN SOCIETY OF JOURNALISTS AND AUTHORS, AUTHORS GUILD, CALIFORNIA MUSEUM OF PHOTOGRAPHY/UNIVERSITY OF CALIFORNIA AT RIVERSIDE, COALITION FOR POSITIVE SEXUALITY, CREATIVE COALITION OF ARTISTS, TRI DANG DO, FEMINISTS FOR FREE EXPRESSION, MARGARITA LACABE, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., MAGGIE LANOUE, LOD COMMUNICATIONS, PETER LUDLOW, CHUCK MORE, PEN AMERICAN CENTER, PHILADELPHIA MAGAZINE, PSINET, INC., ERIC S. RAYMOND, DON RITTNER, THE SEXUALITY INFORMATION AND EDUCATION COUNCIL OF THE UNITED STATES, LLOYD K. STIRES, PETER J. SWANSON, KIRSTI THOMAS, WEB COMMUNICATIONS, AND MIRYAM EHRLICH WILLIAMSON

ALL PARTIES CONSENT TO THE FILING OF THIS AMICUS BRIEF

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BRIEF OF *AMICI CURIAE* AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, *ET AL.* IN SUPPORT OF APPELLEES

The decision below correctly held that provisions of the Communications Decency Act of 1996 ("CDA"), 47 U.S.C. § 223(a) & (d), as amended,[1] that criminalize "indecent" and "patently offensive" speech on the international computer network known as the Internet impermissibly infringe rights of communication under the First Amendment and must be enjoined from enforcement. If not enjoined, the statute will deprive both adults and minors of information that is essential to their health and well-being. The statute is unconstitutionally overbroad in criminalizing non-obscene speech that has any connection with sexual topics, despite the fact that the speech possesses serious literary, artistic, political, or scientific value and is protected by the First and Fifth Amendments.

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1. The CDA is Title V of the Telecommunications Act of 1996, Pub. L. No. 104-104, §§ 501 *et. seq.*, 110 Stat. 56, 133-43. Section 502 of the statute, 110 Stat. at 133-36, enacted the operative provisions here as amendments to Section 223 of the Communications Act of 1934, 47 U.S.C. § 223. Citations in this brief are to the provisions as codified in the Communications Act.

STATEMENT OF INTEREST OF AMICI CURIAE

Amici are a diverse group of 25 individuals and organizations that use the Internet, and include Internet service providers ("ISPs"), over whose lines speech targeted by the CDA is carried; individuals and organizations who place on the Internet speech and other forms of expression on wide-ranging subjects; individuals and organizations that access the Internet to receive speech on diverse topics; and others who require and believe firmly in freedom of expression in connection with their use of the Internet. Many are individuals for whom the Internet provides an unprecedented opportunity to publish and disseminate speech on issues that they consider important. Some are educators who use the Internet for both teaching and research. A complete list of *amici*, with descriptions of their use of the Internet, their interest in this litigation, and the impact that the CDA has had (and would continue to have if enforced) on their varying uses of the Internet, is set forth in a more detailed Statement of Interest of *Amici Curiae* that is appended to this brief. All parties have consented to the filing of this brief, and letters of consent are being lodged with the Clerk.

Amici have the unique ability in this litigation to illustrate one of the fatal flaws in the CDA: its broad sweep that is the antithesis of a narrowly tailored infringement on protected speech. As users of the Internet, *amici* are directly affected by the deterrence of speech that the CDA's overbreadth causes. In some cases, *amici* are deterred themselves from engaging in speech because of fear of prosecution under the statute. In other cases, *amici* are deprived of important information because the statute's deterrent effect causes others to make information unavailable. In either event, the CDA impermissibly infringes *amici*'s rights of communication.

SUMMARY OF ARGUMENT

Each day, the Internet carries a vast array of speech having serious social, political, literary, artistic, medical, and educational merit. The CDA criminalizes much of this valuable

and constitutionally protected speech in a broad sweep that is not narrowly tailored to achieve its stated justification. In so doing, it chills the current and future speech of those who use the Internet. The *amici curiae* who submit this brief represent only a small fraction of the Internet speakers touched by the CDA's chill. The statute cannot achieve its stated ends without simultaneously inhibiting or prohibiting *amici*'s constitutionally protected and socially valuable speech.

The terms "indecent" in Section 223(a)(1)(B) of the statute and "patently offensive as measured by contemporary community standards" in Section 223(d) encompass speech by and to *amici* that has independent value for both adults and minors. By bringing such speech within its scope and chilling its dissemination, the CDA is unconstitutionally overbroad. The three-judge panel below correctly so held. *See American Civil Liberties Union v. Reno*, 929 F. Supp. 824, 854-57 (E.D. Pa. 1996).

In illustrating this overbreadth, *amici* do not advocate access by all minors to all forms of expression on the Internet. *Amici* recognize, for example, that some valuable and protected speech that is appropriate for older teenagers may not be appropriate for elementary school children, and that some speech, while appropriate and even necessary for adults to express and to hear, may not be appropriate for minors under the age of 18. But as demonstrated by examples throughout this brief, the CDA fails to take these gradations into account, thus reducing all speech on the Internet to that appropriate for elementary school children. In the process, the CDA not only criminalizes protected speech, but also deprives *parents* of the freedom and responsibility to choose what their own children will access on the Internet. Parents understand their own children's maturity levels, life experiences, and needs to receive different types of speech far better than the government ever can, and, as appellees' briefs explain in detail, computer technology now has the ability to permit parents to make those selections for themselves. Accordingly, the CDA's censorship of all speech that the government deems "indecent" or "patently offensive" for minors is intolerable under the First Amendment.

ARGUMENT

In Criminalizing Speech with Serious Social, Political, Artistic, Literary, Medical, Journalistic, and Educational Value, the CDA Is Not Narrowly Tailored To Achieve Its Stated Justification

Great and emerging works of art and literature. Life-saving and life-enriching medical information. Social exchange and personal interaction. Expressions of opinion on issues of politics and societal concern. Journalistic reporting. Education on a wide variety of issues. — To some extent, the CDA potentially criminalizes all of these things. It makes unlawful the transmission of any not-otherwise-defined "indecent" communication (§ 223(a)(1)(B)) and the sending or display of any description of certain body parts that is "patently offensive as measured by contemporary community standards" (§ 223(d)). Those terms embrace much that is *not* obscene or pornographic, is *not* harmful to minors, and *is* protected expression under the First Amendment. For that simple reason, the CDA fails the overbreadth test. It is not narrowly tailored to achieve its stated objective of protecting minors.

Appellees, whom *amici* support, do not challenge any of the CDA's proscriptions against speech that is obscene or otherwise outside the scope of the First Amendment's protections. By definition, then, this action challenges only the CDA's prohibition of speech that *is* constitutionally protected. A statute is constitutionally overbroad if it presents a genuine likelihood that it will prohibit a substantial amount of speech that is beyond its permissible application. *See Massachusetts v. Oakes*, 491 U.S. 576 (1989); *Board of Airport Commissioners v. Jews for Jesus, Inc.*, 482 U.S. 569 (1987); *Schad v. Mount Ephraim*, 452 U.S. 61 (1981). Because the speech placed on the Internet by *amici* and by appellees is protected speech under the First Amendment, the court below correctly held (929 F. Supp. at 851, 858, 867 n.2) — and the Government's brief does not appear seriously to contest — that the CDA's content-based criminal prohibition on that speech must be subjected to strict scrutiny. Whatever verbal

formula is used to describe this applicable standard, the CDA must be narrowly tailored to achieve its stated justification, no matter how compelling that justification may be, or, stated differently, must be the least restrictive alternative restriction on speech that will satisfy that objective. *Denver Area Educational Telecommunications Consortium v. FCC*, 518 U.S. __, 116 S. Ct. 2374, 2391-92 (1996).

This Court has held that an ordinance that prohibited the display of nudity at drive-in theaters but included in its sweep non-obscene films protected by the First Amendment was unconstitutionally overbroad. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975). The Court observed that while "[m]uch that we encounter offends our esthetic, if not our political and moral, sensibilities," nevertheless "the Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer." 422 U.S. at 210. The Court noted that the Jacksonville ordinance, like the CDA here, discriminated among movies "solely on the basis of content," *id.* at 211, and that its effect would be "to deter drive-in theaters from showing movies containing any nudity, however innocent or even educational." *Id.* Rejecting arguments that protection of minors warranted the sweeping content-based prohibition in *Erznoznik*, the Court observed that minors themselves have a significant First Amendment right to receive speech and that this right is infringed by a law that "sweepingly forbids the display of all films containing any uncovered buttocks or breasts, irrespective of content or pervasiveness." *Id.* at 213. The Court added:

> Thus [the ordinance] would bar a film containing a picture of a baby's buttocks, the nude body of a war victim, or scenes from a culture in which nudity is indigenous. The ordinance also might prohibit newsreel scenes of the opening of an art exhibit as well as shots of bathers on a beach. Clearly all nudity cannot be deemed obscene even as to minors. Nor can such a broad restriction be justified by any other governmental interest pertaining to minors. Speech that is

> neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.

Id. at 213-14 (citation and footnote omitted). The Court's characterization of the Jacksonville ordinance could apply just as well to the CDA.

In enacting the CDA, Congress failed to recognize and provide for the First Amendment protection enjoyed by speech that has serious social, political, literary, artistic, medical, or educational merit. "Indecency often is inseparable from the ideas and viewpoints conveyed, or separable only with loss of truth or expressive power." *Denver Area*, 116 S. Ct. at 2416 (separate opinion of Kennedy, J.). But by ignoring the redeeming qualities of the speech, the CDA criminalizes *all* speech that might be viewed as "indecent" or "patently offensive as measured by contemporary community standards" in the hands of children, regardless of the value that the speech may have for children (particularly adolescents). And it utterly disregards the value of this speech to adults. The Government itself admits (Govt. Br. at 17-18) that "[t]here may be borderline cases in which it is difficult to determine on which side of the line particular material falls."[2] The CDA's sweep renders it unconstitutionally overbroad. "Quarantining the general [Internet] public against [transmissions] not too rugged for grown men and women in order to shield juvenile innocence . . . is to burn the house to roast the pig." *Butler v. Michigan*, 352 U.S. 380, 383 (1957). *See Sable Communications v. FCC*, 492 U.S. 115 (1989).

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2. Although the Government and its supporting *amici* emphasize what they say is the narrow scope of the statute's provisions, their briefs in fact underscore the uncertainty created by the statute's breadth. For example, one *amicus*, Morality in Media, Inc., apparently views a broad range of AIDS-prevention materials and government documents discussing sexual violence as within the statute's proscription of "content that is indecent but not 'pornographic.'" *See* Br. of *Amicus* Morality in Media at 7-8.

A. The CDA Is Overbroad in Banning Speech of Content Providers.

The overbreadth of the CDA is best demonstrated by the speech that the *amici* content providers and others situated similarly to them regularly place on the Internet and that is endangered under the CDA's proscriptions. In contrast to the "ocean" of "pornography" postulated by the Government and its supporting *amici* (Br. of *Amici* Enough Is Enough, *et al.*, at 7), the affected speech deals with medical information about subjects ranging from cancer detection to AIDS; depictions of artwork ranging from established masterpieces in recognized museums to *avant garde* works in less renowned galleries; literary works ranging from classic novels and poetry to new compositions; speech on social and political issues ranging from sexual abuse to human rights; news reporting on all of these issues; and educational materials of similar scope. The speech ranges from the generally (although by no means universally) acceptable, to that which is less in the mainstream — though no less valuable. Under the CDA, all of it is criminalized.

➤ *Medical Information on the Internet.*

Medical information is widely available on the Internet. It includes descriptions and depictions of sexual and excretory activities and organs that in some "communities" may well be considered "patently offensive," or that some might consider "indecent," but which unquestionably have medical, scientific, social, and educational value. Some sites discuss the onset of puberty. Others discuss sexually transmitted diseases and means to avoid their transmission — an issue of obvious importance to youth and adults alike in today's world. Other topics include prostate cancer and surgery; testicular cancer and preventive self-examination; breast cancer and preventive self-examination; breast reconstruction after a mastectomy; breast feeding; childbirth; and sex during pregnancy. Discussion of these subjects necessarily entails frank and even graphic descriptions

that are within the CDA's scope despite their high social, medical, and scientific importance.[3]

The discussion of puberty on a World Wide Web page of Kaiser Permanente of Colorado called "TeenWeb: Boys, You are Changing," *http://www.kaiser-co.org/teenboys.htm* (Exhibit 1 to the appendix to this brief),[4] presents a vivid illustration of the ability of the Internet to convey medical information of interest to teens. The page explains:

> Boys in puberty start having more erections. This means their penis gets hard and stiff from time to time. This can happen when you touch or stroke your penis, if pants are too tight, or when you ride a bike. It can also happen when you are nervous, scared, tense, or when you're thinking about sex. This is because your sex organs are getting more sensitive.
>
> An erection is normal, although it's sometimes embarrassing because it is unpredictable. Try to ignore it. Usually only you notice it, not others. Think about something else and the penis will get soft and return to its normal size again. At some point, an erection will result in ejaculation. This means that semen, a creamy, white liquid containing sperm will squirt out of the penis. This can happen in

3. As Justice Kennedy pointed out last Term, "In scientific programs, the more graphic the depiction (even to the point of offensiveness), the more accurate and comprehensive the portrayal of the truth may be." *Denver Area*, 116 S. Ct. at 2416 (separate opinion).

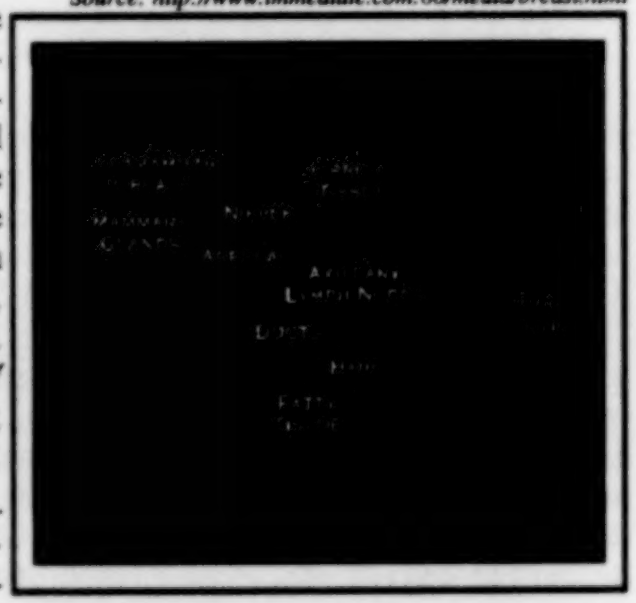
4. Printed copies of World Wide Web pages cited in this brief are included in an appendix of exhibits that is being lodged with the Clerk. That appendix — along with this brief itself — also is being lodged with the Clerk in electronic form (a compact disc) for the Court's convenience. Examples of some of the illustrations included on the Internet, along with citations to their sources, are reproduced throughout this brief in graphics boxes containing material downloaded from Web sites.

> your sleep and you may wake up with wet and sticky pajamas. People call this a "wet dream." This is a normal part of growing and nothing to feel ashamed about. When you start ejaculating, it means you are potentially able to cause a pregnancy in a woman since your body can make and deliver sperm.

The value of this type of information in educating young people about their bodies is readily apparent. The detailed and graphic nature of the description enhances that value, rather than reducing it. And the fact that presentations such as this are aimed directly at adolescents simply makes them more understandable to their intended audience. But even under the Government's new, narrower interpretations (not presented to the court below) of what it calls the "transmission" and "specific child" provisions of the CDA (*see* Govt. Br. at 24-27), the fact that these materials are "knowingly" directed to minors makes them a potential subject of criminal liability under all of the challenged provisions of the statute.

Similarly, illustrations and frank discussions of such important health matters as breast cancer detection through self-examination and the warning signs of penile cancer may fall within the broad language of the CDA. Such discussions, which are essential to informed discourse on these vital subjects, are not uncommon on the Internet. *See, e.g., http://www.immediate.com:80/media/breast.html; http://oncolink.upenn.edu/pdq_html/1/engl/101082.html* (Exhibit 2).

Source: http://www.immediate.com:80/media/breast.html



The same is true of sites candidly discussing surgical issues, such as breast reconstruction and penile prosthetics, and pregnancy issues, such as intercourse during pregnancy and post-caesarean vaginal birth. *See, e.g., http://web.mit.edu/pamurray/www/artbc.html*; *http://www.2020tech.com/mensurg/*; *http://www.enlarge.com/*; *http://www.uiuc.edu/departments/mckinley/health-info/womenhlt/sex-preg.html*; *http://www.childbirth.org/section/VBACFAQ.html* (Exhibit 3). Many of these sites publish photographs, drawings, or other depictions of sexual and excretory activities and organs — illustrations that are essential to convey information about these subjects. Under the overbroad scope of the CDA, all of their authors are subject to the threat of criminal prosecution. Because of that threat, the CDA potentially denies millions of Americans accurate sources of health information that could improve, and in certain cases even save, countless lives.

A paradigm example of legitimate — even compelling — medical material on the Web is information advising about how to avoid the sexual transmission of disease, particularly the transmission of HIV, the virus that causes AIDS. Such information is vital to adults, and may be even more vital to teens. The Web sites offering this information frequently are addressed to sexually active teenagers, a group most likely to engage in sexual experimentation and least likely to have adequate knowledge of how to avoid the dangers of "unprotected" sexual activity in today's world. Any effective delivery of meaningful sexual information to such an audience, which often is unsophisticated when it comes to medical terminology, requires the use of "street language" — including language that was at issue in *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). In *Pacifica*, the Court held that a broadcast featuring George Carlin's use of seven specified "dirty" words in a comedy routine could be restricted to time slots when children were unlikely to be in the audience. According to the Conference Report to the CDA, H.R. Conf. Rep. No. 104-458, at 188-89 (1996), that decision sets the legal standard for determining whether speech violates the CDA's provisions that would ban from all sites and at all times (not just restrict to time

slots) all "indecent" and "patently offensive" speech. Yet, the *Pacifica*-like language that Congress seeks to ban completely from the Internet is essential to the communication of this critical medical information.

For example, *amicus* Coalition for Positive Sexuality authors a Web page designed to provide teenagers with comprehensive information about sexual issues.[5] As it states on that page, "We chose words . . . that we use when we talk about sex with our friends. We're not doctors and we don't pretend to be, so pardon our French!" *See http://www.positive.org/cps/jsy/jsy.html* (Exhibit 6). The site contains detailed and graphic information about "safe sex" practices, including illustrated instructions about how to use a condom, which is an essential element in preventing the spread of HIV. *See id.* at *http://www.positive.org/cps/jsy/safe_sex.html*. Those instructions are frank, friendly,

Source: http://www.positive.org/cps/jsy/safe_sex.html

HERE'S WHAT YOU DO:

1. **Get ready.** Make sure your condoms are fresh – check the expiration date. Throw away condoms that have been very cold or hot or that have been carried around in your wallet or run through the washer. If you think the condom might not be good, get a new one. You and your partner are worth it.

5. There are a number of such sites on the Web. For example, the site of *amicus* Tri Dang Do, a medical student at Boston University, includes a page that provides education to teens on sexually transmitted diseases. *See http://med-www.bu.edu/people/sycamore/std/std.htm/* (Exhibit 4). Another illustrative site is Healthwise, the Health, Education and Wellness program of Columbia University Health Service, which includes an award-winning feature entitled "Go Ask Alice," an interactive question and answer service explicitly dealing with sexual health and relationships. *See http://kwaziwai.cc.columbia.edu/cu/healthwise/alice.html* (Exhibit 5).

colloquial, and unvarnished. *See, e.g., id.* ("That dick has to be hard before you put a condom on it"; "Guys — if you cum in the condom while having sex, hold the condom near your balls and pull out while you're still hard").

The language used in these examples undoubtedly is crude, distasteful, or shocking to many segments of society. But it is the language most likely to be understood by an intended audience that, as the phrase "street language" implies, makes use of such words every day. Although the examples in the preceding paragraph do not contain any of the precise "seven dirty words" from *Pacifica*, no one has suggested that Internet users can avoid criminal liability simply by shunning these seven words, and, in any event, other paragraphs from the Coalition for Positive Sexuality's Web site do contain the *Pacifica* language. *See generally http://www.positive.org/cps/jsy/jsy.html* (Exhibit 6). The language used on its site is just as likely to strike censorious adults as "indecent" or "patently offensive" as the words at issue in *Pacifica*, and it is precisely such language that, according to the conference report, the CDA was intended to ban. That ban is oblivious to the instructional value provided by frank speech of this type, and a statutory proscription of such speech merely because minors — those arguably most in need of the information — may receive it is unconstitutionally overbroad.

Of course, the language used in the foregoing examples will, for many people, be just one small source of objections. For many, *any* frank discussion of sexual topics is indecent, regardless of the words used, and that certainly is true when the discussion turns to more stigmatized sexual practices, such as oral or anal intercourse. Additional objections may be triggered by a discussion of gay or lesbian relationships or sexual conduct between persons of the same sex. Add the thought of minors participating in such activities, and, for many, a conclusion of "indecency" and "patent offensiveness" will follow *a fortiori*.[6]

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6. Community efforts to control public school curriculums have often focused on sex education. *See* Polner, "The Four Forbidden Words," *Newsday*, Feb. 5, 1996, at A03; Baumman, "Groups Pushing Parental Rights," *The Des Moines Register, Metro Iowa*, Feb. 3, 1996, at 5. Similarly, much of the effort to remove books from public school libraries, discussed at pages 17-18, *infra*, has been aimed at sexually explicit literature, including books specifically aimed at helping teenagers deal with their emerging sexuality. *See* "State Ranks 9th in Censorship Tries," *Wisconsin St. Jour.*, Sept. 2, 1993, at 2B; "Panel Says Ban Judy Blume Novel," *Wisconsin St. Jour.*, Mar. 31, 1993, at 3D.

But it is a well-known fact that such sexual activities are a part of the experiences of many teenagers (as well as large groups of adults) today. And it is a depressingly well-known fact that many of these activities can be fatal without proper precautions and advice. Life-saving advice about how to take those precautions therefore cannot be dismissed as too indecent to be communicated. Nevertheless, the CDA is broad enough to sweep it within its prohibitions.

➤ ***Artwork on the Internet.***

With increasing frequency, art institutions are placing home pages on the Internet. Museums have created Web sites or home pages not only to discuss their exhibits and provide a cyberspace forum for art aficionados, but also to display art on the Internet. The overbreadth of the CDA's "indecent" and "patently offensive" prohibitions ensures that the subjective opinions forming the basis of art appreciation now must take a back seat to concerns about what the government or certain unspecified "communities" may deem unacceptable.

The numerous art galleries, museums, and other art institutions on the Internet include the Metropolitan Museum of Art, Whitney Museum of American Art, Smithsonian Institution, and the Vatican Museum. Frequently, their sites provide descriptions of their galleries with links to some of the images displayed there and guided tours through some of the collections. *See, e.g., http://cac.psu.edu/~mtd120/palmer/lobby.html* (Palmer Museum of Art; Exhibit 7). Typically, these sites also include links to the Web pages of other art institutions, and some sites even have provided search mechanisms to assist in locating other

Source: http://www.christusrex.org/www1/sistine/6-Expulsion.jpg

art-related sites and have created links to allow access to those sites. *See, e.g., id.* One organization, World Wide Arts Resources, provides an extensive directory of art institutions on the Internet that includes among its lists a full page of "nude resources." *See http://wwar.com/creator/nudes.html* (included with Exhibit 7). The art institutions' Web pages display a diverse array of art, ranging from such Sistine Chapel nudes as the *Expulsion of Adam and Eve, http://www.christusrex.org/www1/sistine/6-Expulsion.jpg* (Exhibit 8) (works that themselves, until just a few years ago, were covered with strategic drapes of paint because church authorities found the lack of clothing indecent), to modern art collections. Creators and purveyors of such works now have a reasonable fear of prosecution under the CDA for these activities because the CDA encompasses so much.

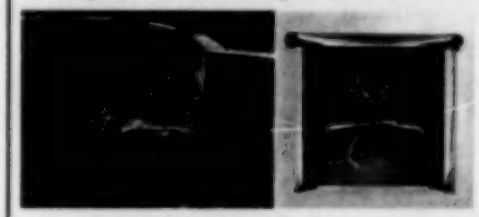
The value of an unfettered display of art on the Internet cannot be exaggerated. With the exponential growth of the Internet and the ability of Web sites to reach millions, the potential for exposure to art is unbounded. Internet users everywhere can view paintings, drawings, and sculpture housed in museums or other collections located thousands of miles away without ever having to leave their homes. *See, e.g., http://www.whitehouse.gov/WH/EOP/First_Lady/images/raw/gard6.gif* (Exhibit 9) (one example of sculpture shown on Internet; other examples of artwork on Internet are collected under that same exhibit number). Far more people can experience art of all varieties through this medium than through any other, including libraries or television, simply because of the

Internet's unprecedented capacity for transmitting information. There also can be no doubt that adults are not the only beneficiaries of this broadened participation in the art world. Art education is invaluable to people of all ages.

Appreciation of selected works of art is, of course, a most subjective judgment. In 1989, for example, Washington's Corcoran Gallery refused to show an exhibition of bold photographs taken by Robert Mapplethorpe, organized and initially shown without objection by the University of Pennsylvania's Institute for Contemporary Art, even though Mapplethorpe was a National Endowment of the Arts grant recipient and many had acclaimed his work. A Cincinnati museum director was arrested on obscenity charges for choosing to show the exhibit, but the jury returned a not-guilty verdict, finding that the art was not obscene. *See* Hartigan, "Mapplethorpe's 'Chilling Effect': A Year Later, Battle Goes On," *The Boston Globe*, Oct. 6, 1991, Sunday, City Edition, p. 1. To many, the exhibit, which included homoerotic photographs, was indecent. To many others, the photographs were modern artistic expressions deserving of exhibition and appreciation. This case demonstrates the dangers posed by a law criminalizing speech based on "community standards" of offensiveness. As the court below observed (929 F. Supp. at 844), Mapplethorpe's works are among those now

Source: http://www.cmp.ucr.edu/exhibitions/w_m/wm2.html

A comparison of *Weston's Nude Floating*, 1939 and Mapplethorpe's *Thomas*, 1986, provides one example of the shift in context presented by this exhibition.



Weston's *Nude Floating*, 1939, an image of a woman floating face up in a swimming pool, with Mapplethorpe's *Thomas*, 1986, an image of a nude man tautly posed in a square structure. Here, the modern, formal analysis usually applied to Weston's work expands to embrace postmodern themes rooted in societal relationships, gender, race, and sexuality. Likewise, Mapplethorpe's work examined next to Weston's invites the viewer to look beyond the lingering NEA controversy and see the image for its formal complexities in the tradition of modernist photography. In both cases the comparisons serve to more firmly ground the artists' work in 20th century art practice.

CAPTIONS:
Edward Weston, *Nude Floating*, 1939, Special Collections, UC/Santa Cruz
Robert Mapplethorpe, *Thomas*, 1986, Robert Mapplethorpe Foundation, © 1986, Estate of Robert Mapplethorpe. Used by permission

exhibited on the Internet and (once again) in danger of prosecution. *See, e.g., http://fileroom.aaup.uic.edu/FileRoom/documents/Cases/337mapplethorpe.html* (Exhibit 10). *Amicus* California Museum of Photography at The University of California, Riverside, is just one of those exhibitors. *See, e.g., http://www.cmp.ucr.edu/exhibitions/w_m/wm2.html*(Exhibit 11). Subjecting its educational site to the threat of criminal prosecution because it is available to minors would be both ironic (it is part of a state university system) and stifling, but the CDA nevertheless has that effect.

The First Amendment does not tolerate banning non-obscene art works merely because of differing subjective judgments. But the CDA subjects art exhibited on the Internet to precisely that damage. In certain communities, even such classic works as Michelangelo's *David* and the now-undraped Sistine Chapel may fall within the broad language of the CDA.

The CDA will chill, and indeed cripple, this valuable use of the Internet. Where art that some may consider potentially "indecent" or "patently offensive as measured by contemporary community standards" is already on the Internet, the museums and other institutions that have placed it there may be exposed to criminal prosecution. Museums, galleries, and individuals now must choose between placing art on the Internet that some might find objectionable, thus opening themselves up to prosecution, or deliberately excluding from their Web sites important art that is protected under the First Amendment. Simply put, the choice for these *amici* — as for all the *amici* — is between prosecution for free speech or chilled speech. The First Amendment protects against such a choice.

➤ ***Literature on the Internet.***

Like art, literature is particularly susceptible to differences in interpretation. That is as true on the Internet as it is on bound pages. The CDA's overbreadth fails to acknowledge that one

Internet user's literature is another's "indecent" or "patently offensive" communication.[7]

Communities throughout the United States have on occasion banned classic literature from libraries, purportedly for being harmful to minors. *See, e.g.*, Dist. Ct. Br. of Pl. Amer. Library Assn. in Support of Mo. for Prelim. Inj., Ex. 19, at Ex. O. The banned works include Whitman's *Leaves of Grass*, Joyce's *Ulysses*, Voltaire's *Candide*, and Chaucer's *The Canterbury Tales*, all of which are now on the Internet. *See http://kwaziwai.cc.columbia.edu/acis/bartleby/whitman/index.html; gopher://wiretap.spies.com:70/00/Library/Classic/canterbury.txt; gopher://gopher.vt.edu:10010/02/155/1; http://www.bibliomania.com/Fiction/joyce/ulysses/* (Exhibit 12). This Court itself has determined that another target of would-be book banners, *Fanny Hill* by John Cleland, is not obscene. *See Memoirs v. Massachusetts*, 383 U.S. 413 (1966). It too is on the Internet. *See gopher://wiretap.spies.com:70/00/Library/Classic/*

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7. Yet another indication of the CDA's overbreadth is the irony that results from the availability in the print media of speech identical to that banned on the Internet under the CDA. Although, as discussed in the main text, book-banning efforts are not uncommon, no federal statute purports to authorize such silencing of protected speech. In books, magazines, and newspapers, adults and minors alike therefore have lawful access to information and other forms of speech of the same nature as that falling under the CDA's rubric of "indecent" or "patently offensive." While the Internet, because of its limitless capacity for providing forums for individual speakers, expands the *amount* of information available in other media, it does not necessarily expand the *types* of information available there. Thus, minors can check out books from libraries, purchase books or magazines or newspapers in bookstores or from other vendors, or subscribe to periodicals in their home, all containing speech of the same sort that they are now legally prohibited from receiving on the Internet. And, publishers in the print and even broadcast media can disseminate that speech while those on the Internet cannot. In failing to be sufficiently tailored to narrowly achieve its stated ends, the CDA fails both to meet those ends and to pass constitutional muster.

fannyhill.txt (Exhibit 13).[8] Considering their track records, there is no reason to believe that communities that have tried to ban or exclude from libraries books in print form will not target them as being "indecent" or "patently offensive" when transmitted, to minors among others, over the Internet. The reasonable fear of prosecution that this prospect will instill in speakers who place all or portions of these works on the Internet renders the CDA unconstitutionally overbroad.

The CDA gives communities an ostensible legal basis for what amounts to online book banning, even though courts have held that removal from school libraries of hard copies of these same works violates of the First Amendment. *See Minarcini v. Strongville City School District*, 541 F.2d 577 (6th Cir. 1976). Even works of a less literary nature are protected when in print form. *See, e.g., Herceg v. Hustler Magazine, Inc.*, 814 F.2d 1017 (5th Cir. 1987), *cert. denied*, 485 U.S. 959 (1988). No different result should obtain when such works are placed on the Internet. Yet under the CDA, a very different result, of criminal proportions, will obtain. Despite the Government's argument to the contrary, there is nothing in the language of the CDA that permits consideration of the literary, social, or historical merit of a targeted literary work.

The so-called "classics" are not the only literature transmitted on the Internet that the CDA endangers. *See, e.g., http://www.igc.org/Womensnet/dworkin/New.Womans.Broken.Heart.html; http://www.igc.org/Womensnet/dworkin/IntercourseI.html* (Exhibit 15) (short stories by noted feminist Andrea Dworkin). Perhaps even more so, newly composed works by emerging authors and poets are likely to be the target of the "indecency police." The Internet is a ground-breaking medium for innovative authors because they can publish and disseminate their literary creations without the need for traditional agents and publishing houses or for personal financial

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8. Some classic literature also is available on the Internet in audio format. *See, e.g., http://www.wbr.com/nakedlunch/ajparty.wav* (Exhibit 14) (excerpts from *Naked Lunch*, as read by author William S. Burroughs).

expenditures. On the Internet, they can share their works with readers and fellow writers, exchange criticism and suggestions, hone their craft, and achieve satisfaction knowing that others are finding enjoyment or inspiration reading their works. Yet works placed on the Internet that touch on such things as the sexual aspects of love and romance can be expected to be prime targets for those quick to find "indecency."

Groups such as *amicus* Creative Coalition of Artists, an organization of online poets, have felt the chill from this overbreadth. Even prior to the final enactment of the CDA, America OnLine removed dozens of poems from Creative Coalition's Poetry Corner in response to demands of some who believed that the use of words such as "breast" rendered the poems indecent. Some poems were removed for no discernible reason whatsoever, making it impossible for their authors to understand what language had been considered "indecent" and therefore had to be avoided. *See http://motley-focus.com/~timber/aol.html* (Exhibit 16). Now the vagaries of "indecency" also carry the threats of *government* censorship and criminal prosecution.

Nor is the scope of the CDA limited to books. Technological innovations now make it possible to transmit and receive not just text and pictures on the Internet, but also motion pictures, television and theatrical productions, and musical compositions (as well as scripts and lyrics from those works). These contemporary compositions sometimes contain explicit sexual themes or lyrics. Just one example of a contemporary musical composition with a sexual theme and lyrics is Alanis Morissette's *You Oughta Know*, which won the 1996 Grammy Award for Best Rock Song of the Year. The song is on the Internet in three available formats: the lyrics, the audio version, and the music video. *See http://http.tamu.edu:8000/~vkb5818/Alanis_Morissette_V2.0/Alanis_Lyrics/oughta.html; http://www.animatrix.com/Alanis_Morissette/ra/Oughta.wav; http://mbess.ccsm.uiuc.edu:80/alanis/know1.mov* (Exhibit 17). *See also http://www.aswellas.se/drdre/dreday.wav* (Exhibit 18) (another example of sexually controversial pop musical compositions on Internet in audio form); *http://www.homevisioncinema.com/*

catalog/thatobscure.alarge.mov (Exhibit 19) (example of movie clips from sexually explicit non-obscene foreign films). Such new compositions on the Internet are in jeopardy under the CDA.

➤ ***Social and Political Discourse on the Internet.***

Issues of social and political import are widely discussed on the Internet. Certain issues implicate topics of discussion that fall squarely within the overbroad language of the CDA, and yet are both vital to informed discourse in a democratic society and fully protected under the First Amendment. They include, but certainly are not limited to, sexual abuse and human rights issues.

For example, Karra's Korner and The Survivor's Page are Web sites dedicated to sexual abuse and rape survivors. *See http://www.xroads.com/rainbow/karra.html*; *http://cam043212.student.utwente.nl/* (Exhibits 20 and 21). They include chat rooms offered as a forum for survivors to share their experiences and recoveries with one another, and pages for posting original poems and stories composed by them. Ed Carp, an *amicus* in the court below, operated a similar site called "Khijol" that was dedicated to survivors of sexual abuse; it has since been removed from the Web. It is impossible for such sites to avoid occasionally describing or depicting sexual activities and organs in a manner that would, as measured by the contemporary standards of some communities, be patently offensive. Considering the nature of the issue, it would be unreasonable and unrealistic to expect otherwise. Unfortunately, these realities are no impediment to the CDA's reach.

It would likewise be undesirable for such sites to prevent minors from participating, considering that sexual abuse often is perpetrated on minors. Even if it were technologically possible for those who maintain such Web sites to exclude minors (which it is not), such a restriction would undermine the sites' very purpose and impair their ability to fulfill their mission. One site, for example, deals explicitly with ritual abuse. *See http://www.xroads.com/rahome/rahome.html* (Exhibit 22). Others address

family violence, sexual abuse, and child abuse, all linked by common sites such as that of Internet Support Groups. *See http://www.xroads.com:0080/rahome/support.htm*; *http://www.vix.com/pub/men/abuse/abuse.html* (Exhibit 23). Still another site carries writings, letters, and poetry by survivors. *See http://cam043212.student.utwente.nl/Writing.htm* (Exhibit 24). To deprive these Internet users of the ability to speak, communicate, and assist one another — having survived (or being still trapped in) the horrifying experience of sexual abuse — would be yet a further violation. But the authors of sites like these realistically may be concerned that they now face prosecution for providing this service and may be unable to continue doing so.

Similarly, it is essential to the mission of human rights organizations such as Derechos, an *amicus* here, to inform about the nature of human rights abuses wherever and in whatever form they occur. Too often, such abuses include physical atrocities relating to the victims' "sexual or excretory organs." However distasteful, difficult, or "offensive" this topic may be for some to confront, it is speech of truly serious social and political merit. Educating about human rights abuses, and persuading people to fight against them, is a vital form of speech on the Internet.

For example, *amicus* Margarita Lacabe, who authors the Derechos Web site, includes on that site excerpted personal accounts of torture, including sexual torture of both men and women, recounted in *Nunca Mas* (*Never Again*), the Report of the Argentine National Commission on the Disappearance of Persons, which details the disappearance of 9,000 people in Argentina in the 1970s. *See http://www.derechos.org/indecent.html* (Exhibit 25). They include the following:

> . . . At some point he feels that they pick him up, they take him through a corridor to another place, where they order him to undress, they throw him on a cot and they say to him: "Look, I am 'El Aleman,'" while the victim was hearing women and men screaming. "El Aleman" tries to introduce a pipe into

his anus. Another voice tells them to leave him, and speaking to the victim, he says: "you see, I am 'El Gallego,' and saved you from him putting the iron bar in you." They put him naked, with his legs and arms opened, tied with leather. "El Gallego" tells him to speak, while he applies an electric shock on his ankle, burning his muscles, he still has the marks. He is also interrogated by a woman. "El Gallego" applies the "picana" [electric cattle-prod-like instrument] on his armpits, where he also still has the scars. "El Gallego" laughed and tells the woman: "You, you like the piece, you continue." Then he feels as the woman takes his member and introduces in it some caustic-like liquid, and because of this he still has problems urinating.

. . . Then they proceeded to introduce in my vagina what I knew afterwards to be a baton or a police stick. Then they took me to another building, where they made me eat handcuffed to a table. When I refused to, they took me to another building, where they would make me stand and go back to interrogating me, hitting me on the head and threatening to introduce the stick I mentioned before in my anus.

Many of the victims of such torture were themselves younger than 18. To omit from Internet coverage of human rights abuses such personal accounts as these, written by those who have suffered through them for the sake of the values they champion, would be to silence voices of experience, education, and warning. Nevertheless, the CDA is broad enough to do so. The CDA forces authors of home pages dedicated to these issues, and users of those pages, to make a choice between emasculating their speech by omitting descriptions and depictions of human rights abuses, or risking criminal prosecution for speaking out. The First Amendment does not tolerate that choice. Indeed, the irony of our democratic government silencing speech on human

rights abuses inflicted by non-democratic regimes should not be lost on the Court.

Of course, the story of the Argentine disappearances, like many of the reports of human rights abuses on the Internet, is historical and serves only to warn readers: "Never again," as to crimes against humanity that have already occurred. But abuses involving "indecent" and "patently offensive" behavior also are perpetrated today, and the Internet is the quickest and most effective tool for exposing them. One wonders whether the disappearances — or indeed the Holocaust — would have occurred so brazenly if the Internet had been reporting on them twenty or sixty years ago. Yet the graphic reports that might have caught the world's attention would have been threatened with criminal prosecutions under the CDA.

➤ ***Journalism on the Internet.***

The news media have gone online. Hundreds of news providers in the United States alone, ranging from daily newspapers to weekly news periodicals to broadcast news agencies, have placed home pages on the Internet. Countless more around the world have done so, and are accessible by computer users in this country. Some individuals and groups have created home pages to link these news sites together for ready access by Internet users eager to receive information on current events via computer, rather than the traditional print and broadcast media.

Information in news sites online contains a wealth of speech that inevitably will include speech considered by some to be "indecent" or "patently offensive." High on that list are reports or photographs regarding the various other subject areas that are discussed in this *amicus* brief. Medicine, art, literature, and social and political issues of all kinds are covered by the news media. The Internet coverage of them is no different. *See, e.g., http://www.phillynews.com/packages/tibet/TENZ08.html* (Exhibit 26) (recent *Philadelphia Inquirer* article concerning torture and abuse of nuns in Tibetan prison); *http://detnews.com/menu/stories/19449.htm; http://detnews.com/96/nation/*

9701/03/01030061.htm (Exhibit 27) (recent *Detroit Free Press* articles about treatments of yeast infections in women and impotence in men). The angry posturing of combatants in war, at the scenes of crime, in the political arena, outside abortion clinics, or in other newsmaking settings will often provoke the use of language adjudged by some to be indecent. And from television footage of the napalm bombing of Vietnam villagers, *e.g.*, *http://www.portoftacoma.com/colovos/VIETNAM/08/00000438.JPG* (Exhibit 28), to classic *National Geographic* reports on indigenous peoples in less developed parts of the globe, *e.g.*, *http://www.nationalgeographic.com/modules/contact2/briefing/clickup/portfolio-k3.html* (Exhibit 29), the daily parade of news events will often result in compelling photojournalism. Under the First Amendment, coverage of such issues, disturbing though they may be, is not limited to material suitable to minors. *Cf. Herceg*, 814 F.2d at 1020 (First Amendment protected article detailing life-threatening sexual act, even though adolescent who obtained article died trying to imitate act).

It is reasonable for those who place their reporting on the Internet to fear prosecution under the CDA. Precedent as to the print and broadcast media demonstrates the propensity of some

Source: http://www.portoftacoma.com/colovos/VIETNAM/08/00000438.JPG

people to view factual reporting, which is at the core of the First Amendment, as "indecent" or "patently offensive." For example, when National Public Radio in a profile of John Gotti aired an evidentiary tape used in court that included Gotti's repetitive use of expletives, a listener sued the Federal Communications Commission to force the agency to punish NPR. *See Branton v. FCC*, 993 F.2d 906 (D.C. Cir. 1993), *cert. denied*, 114 S. Ct. 1610 (1994).

Nevertheless, journalists cannot and should not shy away from coverage of topics within the potential scope of the CDA, for such topics are of legitimate public concern. The CDA raises the stakes in covering such issues. Despite the public interest in government funding of the works of controversial artists, which has led to extensive media coverage over a period of years, the CDA might, for example, have subjected the media to threatened prosecution for describing one of the works in question, Andres Serrano's "*Piss Christ*," as a crucifix placed in jar of urine, which many certainly would find offensive, or for reporting Serrano's explanation of that work. *See http://www.collegian.psu.edu/archive/1996_jan-dec/1996_oct/1996-10-02_the_daily_collegian/1996-10-02d01-001.htm*; *http://www.artsusa.org/Advocacy/flatline.htm* (Exhibit 30). Similarly, just a few months before the decision below was rendered, *Philadelphia Magazine*, an *amicus* here, reported on male prostitution in Center City, Philadelphia. *See* "The Vampires of Delancey Street," *Philadelphia Magazine*, March 1996, p. 64. The report's necessarily graphic content raised a specter of criminal liability under the CDA in the event of Web publication.[9]

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9. As the Serrano reporting demonstrates, these concerns are not limited to professional news organizations, but apply equally to less traditional publications like on-line college newspapers, many of which contain articles with frank discussions of sexuality. *See also The Daily Californian* (Univ. of Cal., Berkeley), *http://www.dailycal.org/Issues/09.09.96/condoms.txt* (Exhibit 31); *The Daily Pennsylvanian* (Univ. of Pa.), *http://www.dp.upenn.edu/AppleSearch.acgi$RETRIEVE,13,11964,5506,0,6927,0* (Exhibit 32). They also apply to organizations seeking to issue press releases about these topics. For example, the

The CDA places a gag on those who would report the news, forcing them to engage in self-policing far beyond anything required in the print media (to which the Internet is most analogous) or even the broadcast media. The CDA ban on speech applies twenty-four hours a day, seven days a week, every day of the year. Unlike the broadcast restrictions approved in *Pacifica*, there is no "adult" time zone available here, and no recognition of the utility of scrambling mechanisms. The gag on the Internet is complete and total.

➤ *Education on the Internet*

The Internet is a powerful teaching and research tool. In universities, for example, professors use the Internet to supplement printed materials available to students, some of whom are minors, in order to offer more comprehensive treatment of facts and issues. The ready access to information made possible by the Internet, in addition to smaller local area networks within university communities, enhances the educational experience. Professors use the Internet not only to teach courses covering the subjects discussed in the foregoing sections of this brief — for example, medicine, anatomy, biology, art, social work, journalism, and human rights — but also courses on such issues as the social and psychological effects of pornography and the philosophical implications of cyberspace. This is accomplished by posting course materials on Web sites; transmitting, via e-mail, information located elsewhere on the Internet; encouraging students to explore the information available on the Internet in a particular subject area; and, in many cases, by a combination of all of these methods. And as discussed later in this brief, professors also utilize the Internet in their own research and to communicate and exchange information with their colleagues at other institutions.

CDA's restrictions could impede *amicus* Lambda Legal Defense and Educational Fund's ability to disseminate information about a recent litigation victory involving anti-gay abuse of a teenager that included a mock rape.

For example, *amicus* Peter Ludlow, an Associate Professor at the State University of New York at Stony Brook, places online all of his course materials for his course, entitled "Conceptual Issues in Cyberspace." The course covers, in an online context, such issues as the nature of online sexual behavior in multi-user online games known as "MUDs." The very reason that some materials are used in the course is that they are construed by some as "indecent," and an analysis of that construction is part of what the course addresses. Transmitting these materials, even in the context of providing a comprehensive academic analysis, may itself be construed "indecent" and, therefore, criminalized by the CDA. Certainly the wide-sweeping CDA does not provide for consideration of the context in which materials are placed on the Internet. For that reason, Professor Ludlow chose to change his approach to using online course material for his class last semester on moral reasoning as applied to the Internet, which included materials actually subject to censorship and thus considered by some to be "indecent" or "patently offensive" *per se*. While most of the readings for the course were made available online, Professor Ludlow felt unable to provide online copies of the more controversial materials, concerned that if the CDA were in effect he could be subject to prosecution under its provisions for his teaching activities.

The CDA therefore poses a threat to academic freedom, which requires broad latitude for teaching and research in the pursuit of truth and knowledge. *See, e.g., Keyishian v. Board of Regents of University of State of New York*, 385 U.S. 589, 603 (1967) (recognizing importance of academic freedom to democracy). The *1940 Statement of Principles on Academic Freedom and Tenure*, adopted 57 years ago by *amicus* American Association of University Professors and endorsed by more than 150 professional organizations and learned societies, applies fully and forcefully in the context of the Internet of the 1990s: "Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning." AAUP Policy Documents

& Reports (1995 ed.); *see http://www.igc.apc.org/aaup/1940stat.htm* (Exhibit 33). The criminal proscriptions of the CDA would eviscerate vast realms of teaching and learning materials, to the detriment of both teachers and students, both adults and minors.

The CDA also stifles access to information available in libraries, including those affiliated with institutions of higher learning. "A library is a mighty resource in the free market place of ideas. It is specially dedicated to the broad dissemination of ideas. It is a forum for silent speech." *Minarcini*, 541 F.2d at 582-83 (citations omitted). Yet, while materials available in print form are fully accessible to minors and adults, the CDA prohibits the same access on the Internet. And, while a library has the freedom to choose what books and periodicals to include in its collection, so that it can identify and eliminate works it determines to be unsuitable, the CDA prevents it from relying on its own judgment of what Internet sites its users may access. By making access to the Internet available to minors, a library or individual librarian now risks prosecution under the CDA.

B. The CDA Also Is Overbroad in Banning Speech Sought by Content Recipients.

It is not only speakers on the Internet who feel the chill posed by the CDA. The millions who access speech on the Internet feel it as well. They do not open themselves up to criminal prosecution, as do content providers (although, if they download the content into e-mail messages to minors or otherwise disseminate questionable content so that it may reach a minor, they risk becoming content providers themselves). But they are deprived of access to speech with serious redeeming merit which they are entitled to receive under the First Amendment.

Recipients of speech are equally entitled to protection under the First Amendment. That protection is afforded "to the communication, to its source and to its recipients both." *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 756 (1976). The "right of the public to receive suitable access to social, political, esthetic, moral, and other

ideas and experiences" is "crucial" and "may not be constitutionally abridged" by statute or regulation. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969). Nevertheless, the CDA violates this principle.

Several of the *amici* experience the chill of the CDA from the perspective of a recipient of speech. For example, Lloyd K. Stires, a social psychologist and professor who teaches a seminar entitled "Pornography: Critical, Behavioral and Legal Approaches" at Indiana University of Pennsylvania, conducts research for the course on the Internet. The CDA jeopardizes his ability to research non-obscene speech protected by the First Amendment. *Amicus* American Association of University Professors represents thousands more like Professor Stires, who increasingly depend on the Internet as a source of information on a host of issues, and a teaching tool for students who include minors. Many such controversial issues, or the approaches that professors might choose to bring to more mundane issues, will undoubtedly infringe on the sensibilities of some communities sufficiently to bring within the chilling scope of the CDA both professors who access "indecent" or "patently offensive" information from the Internet, and those who post it there.

Similarly, Miryam Ehrlich Williamson, a freelance technical journalist who conducts nearly of all her research on the Internet and whose topics have included medical disorders that affect "sexual or excretory activities or organs," may eventually find under the CDA that the Internet has become, not a font of information, but rather a dry well for some of those topics. That will also be true for journalists, who rely increasingly on the Internet as an invaluable research tool. The ban affects all users, including those serviced by *amicus* Eric Raymond, a director of Chester County InterLink, a Pennsylvania ISP that provides free access to the Internet for those who are economically disadvantaged and physically challenged. As these examples illustrate, the CDA would potentially freeze out entire segments of society from exercising their First Amendment right to participate in this new high-tech marketplace of ideas.

The CDA, particularly because it poses the harsh sanction of criminal prosecution, decreases the likelihood that in the future there will be speech on the Internet that these *amici* can view and use for undeniably legitimate purposes. In this way as well, the CDA is unconstitutionally overbroad.

CONCLUSION

For the foregoing reasons, *amici curiae* urge the Court to affirm the decision of the three-judge panel that preliminarily enjoined enforcement of the Communications Decency Act of 1996, and to declare the Act unconstitutional.

Respectfully submitted,

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Dated: February 20, 1997.

STATEMENT OF INTEREST OF *AMICI CURIAE*

The **American Association of University Professors** (AAUP) is an organization of approximately 44,000 faculty members and research scholars in all academic disciplines. Founded in 1915, the Association is committed to the defense of academic freedom and the free exchange of ideas in scholarly and creative work. Among the organization's central functions is the development of policy standards for the protection of academic freedom, tenure, and other elements central to higher education. The Association's policy statements have long emphasized the need for wide latitude in teaching and research for professors and their students in the pursuit of knowledge — including with regard to controversial topics or examples that are relevant to the subject matter. *See, e.g., 1940 Statement of Principles on Academic Freedom and Tenure*, AAUP Policy Documents & Reports (1995 ed.) (endorsed by more than 150 professional organizations and learned societies). AAUP's policies are widely respected and followed as models in American colleges and universities. *See, e.g., Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 579 n. 17 (1972); *Tilton v. Richardson*, 403 U.S. 672, 681-82 (1971).

Faculty members rely increasingly on the Internet for teaching and research. AAUP is concerned that the CDA will chill on-line expression and discussion on a wide variety of academic subjects (*e.g.*, medicine, biology, anatomy, social work, art, and journalism), impairing use of this promising new medium for legitimate pedagogical and research purposes in the pursuit of truth and knowledge.

The **American Society of Journalists and Authors** is a professional association representing journalists and authors, primarily in the print media, many of whose works are placed in whole or in part onto the Internet. Claire Safran is the Chairperson of the ASJA's First Amendment Committee and its *amicus* contact person. The ASJA and its members are concerned that the CDA will prohibit certain writings from being placed on the Internet and chill free expression online. *See* Exhibit 35.

The **Authors Guild** is a national association of almost 7,000 professional book and periodical writers of all genres, including journalists, historians, biographers and other writers of fiction and nonfiction. Founded in 1912, it is the oldest and largest organization of published writers in the United States. Members of the Authors Guild include winners of the Pulitzer and Nobel Prizes, National Book Awards, and other prestigious awards and prizes. The Authors Guild works to promote the professional interests of its members and to educate the community at large on issues facing publishing-related industries.

One of the Authors Guild's principal purposes is to express its members' views in cases involving questions of freedom of expression and to support that fundamental constitutional right. Many of its members rely heavily on the extraordinary opportunity for free and open communication offered by on-line services and the Internet, which allow its members to participate in a true "marketplace of ideas." The Authors Guild opposes the CDA because it will chill free speech in this important forum.

Since 1993, the **California Museum of Photography at the University of California, Riverside** has been producing exhibitions on the Internet that combine both fine art and scholarship. *See generally http://www.cmp.ucr.edu/frames/intro.html* (Exhibit 36). Projects such as a comparison of the work of photographers Edward Weston and Robert Mapplethorpe would be restricted by the CDA. *See http://www.cmp.ucr.edu/exhibitions/w_m/wm2.html* (Exhibit 11). Further, the California Museum of Photography at the University of California, Riverside has long championed the concept of the Internet as an expressive medium for both individual artists and for collaborative activities. Provisions in the CDA could prohibit both advanced scholarship in the visual arts and practice by contemporary artists exploring the unique attributes of the Internet as a medium for pictorial discourse and active collaboration across state and international boundaries.

The **Coalition for Positive Sexuality** is a grassroots volunteer group originally formed by high school students and members of various AIDS awareness, pro-choice, women's health, and gay rights groups to respond to what it identified as a health crisis among Chicago teenagers in terms of teen pregnancy, sexually transmitted diseases, and lack of awareness of issues relating to homosexuality. Its purpose is to provide teens with comprehensive information on sexuality and reproductive control, and to stimulate debate on the quality of sex education in public schools and around the country.

The Coalition maintains a Web site directed to teenagers and intended to provide accurate information on sexuality. *See http://www.positive.org/cps/* (Exhibit 37). The site includes, in both English and Spanish, information on state laws regarding abortion, and a listing of electronic and general resources. The information includes definitions of sexual organs, sexually transmitted diseases, and other issues related to sexuality that could be considered "indecent" or "patently offensive" according to particular community standards. The site is visited daily by more than 1,500 users from more than eighty countries. The Coalition also communicates via e-mail directly with minors, frankly answering questions about sexuality. Natasha Minsker is the *amicus* contact person for the Coalition.

Creative Coalition of Artists is a national Internet organization comprised of poets who place their works on an America OnLine ("AOL") page called the Poetry Corner. *See http://www.on-net.net/~cca/* (Exhibit 38). The poets within Creative Coalition use the Internet to share their poetry and to exchange critiques, suggestions and comments on it, as well as to enable others simply to enjoy reading it. Jordanne Holyoak is its media coordinator and *amicus* contact person.

Creative Coalition and its members are concerned that the CDA may prohibit certain writings from being placed on the Internet and that it will chill free expression. Their concern has particular force because, even prior to enactment of the CDA, AOL had removed dozens of poems from the Poetry Corner in

response to demands by some who believed that the use of such words as "breast" rendered a poem "indecent." Some poems were removed for no discernable reason whatsoever, making it impossible for their authors to understand what language had been considered "indecent" and therefore had to be avoided. Under the CDA, the poets of Creative Coalition face not only removal of their poetry by the service provider, but also the even harsher and more chilling threat of criminal prosecution by the federal government.

In light of the fact that some already have labeled poetry written by members of the Creative Coalition as "indecent" or "patently offensive" as measured by some unarticulated standards, the fear of prosecution experienced by its members is well founded. In the past, works of poetry such as those authored by the beat poets Allen Ginsburg and Jack Kerouac were deemed "indecent" and were banned in some communities during the 1950s and 1960s. The CDA poses a threat to those who post such works on the Internet, as well as to those who author or post newly composed poetical works that might be deemed "indecent" according to some community standards but which have artistic and social merit today and which may even become the classics of future generations.

Tri Dang Do is a student at Boston University School of Medicine. He authors a Web site that includes a page "prepared for and dedicated to the teens of East Boston" that provides education on sexually transmitted diseases (*http://med-www.bu.edu/people/sycamore/std/std.html*). *See* Exhibit 4. The information is strictly medical in nature, but presented in a way that teenagers will understand and with which they can identify. His goal is to help teens accessing the site to engage in healthy behavior and to teach them how to handle their sexuality in a safe and responsible manner, by arming them with factual information. He believes that it is vital that he perform this service and that teens accessing the Internet have a way of receiving this potentially live-saving information. He is concerned that the CDA poses a risk of prosecution to him for posting language that is essential to any discussion of sexually

transmitted diseases — their symptoms, prognoses, treatments or cures, and avoidance.

Feminists for Free Expression is an organization comprised of a diverse group of women who believe that freedom of expression is especially important for protecting and furthering women's rights. It maintains a Web site on which it describes these beliefs. *See http://www.well.com/user/freedom/* (Exhibit 39). It believes that the appropriate way to protect children from exposure to harmful materials on the Internet is increased parental responsibility and supervision, combined with advancing technology to aid parents in their efforts to protect their own children. *See id.* In addition to these beliefs, the organization's opposition to the CDA stems from a concern that it could be used to ban from the Internet works of art and literature that are expressions by women of their own sexuality, as well as materials that inform women and teenage girls about their own bodies. Similar materials in print form, such as the landmark book *Our Bodies, Ourselves,* have in the past been the targets of those who felt that they were "indecent" or "patently offensive," while failing to recognize or appreciate their tremendous educational value. Feminists for Free Expression has a reasonable concern that similar works transmitted on the Internet will be prohibited under the CDA.

Margarita Lacabe is a student at the Hastings School of Law who authors a Web site called **Derechos** that is devoted to encouraging human rights activism around the world by providing human rights information. *See http://www.derechos.org/derechos.html* (Exhibit 40). An active member of Amnesty International, Ms. Lacabe through her site provides links to Web sites maintained by that organization and other human rights organizations, and also publishes a Human Rights Newsletter available on its site. *Id.* Included on the site is a page excerpting personal accounts of torture, including sexual torture, contained in *Nunca Mas* (*Never Again*), the Report of the Argentine National Commission on the Disappearance of Persons, which covers the disappearance of 30,000 people in Argentina during the 1970s. While the accounts are graphic and might be deemed

to be "indecent" or "patently offensive" in some communities, Ms. Lacabe believes that it is the human suffering itself that is indecent, not the description of it. She believes that such descriptions are vital to informing people (including minors who have a right to know what is happening in their world) of human rights abuses, and to persuading people to fight these abuses. For placing this information on the Internet, where it is accessible to minors, Ms. Lacabe has a reasonable fear of prosecution under the CDA.

Lambda Legal Defense and Education Fund is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, and people with HIV/AIDS through litigation, education and public policy work. Lambda was founded in 1973 and brought the first AIDS discrimination lawsuit in 1983. Much of Lambda's litigation and advocacy work focuses on ensuring that lesbians and gay men can communicate openly about their sexual orientation without retribution, and on ensuring that all people — including young people — have access to accurate, understandable HIV prevention and treatment information.

Lambda uses the Internet to communicate with its clients and constituents, and to disseminate information about legal and policy issues related to sexual orientation or AIDS to lawyers and grassroots activists throughout the United States and abroad. Lambda's AIDS Project currently contributes to a Web site, *http://www.the body.com* (Exhibit 52), that is dedicated to providing a wide range of medical, social, political, and legal information of importance to people with HIV. Lambda is also in the process of designing its own Web site, through which it will attempt to reach gay youth with information about their rights and about resources that may help them deal with the isolation that so many gay and lesbian adolescents feel in homophobic family, school, or community environments. Lambda also uses the Internet to distribute press releases. For example, Lambda recently announced a favorable jury verdict and settlement in *Nabozny v. Podlesny*, a case involving the brutal anti-gay abuse of a teenager at the hands of his schoolmates, without any intervention by

school authorities. Even accurate descriptions of that abuse, which included a mock rape, could be deemed by some to fall within the CDA's censorship, as could much of the other information Lambda transmits and receives over the Internet.

Expression about topics related to sexuality, or about sex itself, has inherent value and should remain free from government interference on the Internet. The CDA jeopardizes Lambda's own postings on Web sites and ongoing use of the Internet to communicate with individuals across the country and internationally about gay- or HIV-related issues.

Maggie LaNoue authors a Web site called **NewsBoy**, which provides links to hundreds of world news sites on the Web. *See http://www.newsboy.com/* (Exhibit 41). The NewsBoy site allows users to go to news of state, national, and international news services online. It carries links to such nationally syndicated news sources as *Time* Magazine, *The Wall Street Journal*, ABC News, and CNN. There also are links to ElectNet, a site which carries election news in each of the fifty states, and to the U.S. Community Page Index out of Massachusetts, a network that itself links to over 1,000 American newspapers.

NewsBoy also carries links to such international news sources as the OneWorld News Service out of the United Kingdom and "Daily News: Just the Links," a Web site out of the Netherlands that links users to more than 200 media organizations worldwide. Many of the sites to which NewsBoy provides links have RealAudio clips. Ms. LaNoue plans in the future to add to NewsBoy additional features, including an index of news sources online in all fifty states, including state-by-state weather and sports.

The news sources to which NewsBoy provides links may include descriptions or depictions that some might deem "indecent" or "patently offensive," particularly depending upon the individual community standards to be applied. Ms. LaNoue can neither identify such material nor edit sources to delete such

material. The list of NewsBoy links is so extensive that she cannot even visit them all, let alone monitor them regularly. She is concerned that under the CDA she could be held responsible and criminally prosecuted for providing these links. The user-friendly NewsBoy site may no longer be able to provide this wealth of news access to computer users if the author may be held responsible for all the content of the links.

LoD Communications is an Internet service provider serving the Tallahassee, Florida region. It is concerned that the CDA makes it responsible for monitoring and removing communications by its customers, or Web sites that it carries, based on a vague, undefined, and overbroad standard of what is "indecent" or "patently offensive." Todd Lawrence is LoD Communications' *amicus* contact person.

Dr. Peter Ludlow is an Associate Professor in the Department of Philosophy at the State University of New York at Stony Brook. Included among the classes he teaches is a course entitled "Conceptual Issues in Cyberspace," which covers, in the online context, such philosophical issues as the nature of self and community. His practice is to place all of his course materials for the class on his home page, but the CDA has placed a chill on this teaching practice, and he has declined to place some of the more controversial materials online as a result. *See http://semlab2.sbs.sunysb.edu/Users/pludlow/highnoon.html* (Exhibit 42). He believes that under the CDA he may be prohibited from placing on that site materials relating to the nature of online sexual behavior in MUDs (multi-user interactive games played over the Internet) and other materials that are essential to the course but that may be termed "indecent" or "patently offensive." The teaching materials used for that course and located on the home page were published in book form last spring. *See High Noon on the Electronic Frontier: Conceptual Issues in Cyberspace* (MIT Press 1996).

Professor Ludlow also offered in the fall 1996 semester a course entitled "Moral Reasoning," which applied traditional concepts in moral reasoning to the ethical dilemmas that arise in

cyberspace. Included on the class syllabus were discussions of censorship on the Internet and the CDA itself. Professor Ludlow believes he cannot comprehensively or meaningfully teach these issues without giving examples of communications that might be "indecent" or "patently offensive" under the CDA but which nevertheless are worthwhile communications, and that he cannot do so without violating the CDA himself. Professor Ludlow was able to make available on the class web site most of the materials for the course, but felt unable to provide online copies of the more controversial materials, and made do by either merely alluding to their contents, or locating published hard copy versions of those materials.

Chuck More owns an art gallery in Philadelphia, Pennsylvania. He authors a Web site to display exhibitions of artwork sold at his gallery. *See http://www.libertynet.org~artst/more/* (Exhibit 43). The art displayed there regularly includes nudes, both painted and photographed. *See id.* Such artwork, displaying as it does sexual organs, could be considered "patently offensive" according to the standards of some communities, thus placing Mr. More in jeopardy of criminal prosecution.

Philadelphia Magazine is a general interest magazine published by **Metro Corp.** and operates its own Web site. It covers a broad range of issues of interest to the Greater Philadelphia area, some of which relate to medicine, art, literature, social affairs, politics, education, and sexual topics. For example, its March 1996 issue included a report on male prostitution in a Center City, Philadelphia neighborhood. Some material in that article might be within the CDA's scope if it were placed on magazine's Web site. *See* "The Vampires of Delancey Street," *Philadelphia Magazine*, March 1996, p. 64. The magazine also publishes classified advertisements, including personal advertisements by people seeking companions. *See id.* at 158. It places some of its editorial content and advertising online. *See http://www.phillymag.com/* (Exhibit 44). The magazine fears that it may not be able to engage in cyberspace publishing of some articles and advertising without risk of prosecution under the CDA.

PEN American Center ("PEN") is an organization of 2,400 novelists, poets, essayists, translators, playwrights and editors, chartered to defend free and open communication within all nations and across national boundaries. PEN has taken a leading role in attacking restrictive laws, rules, regulations, and practices that censor, curb or limit freedom of speech or expression in the nation.

Of all the restrictive practices that might censor an author's work and restrict freedom of speech, PEN American Center believes there is none more sweeping and dangerous than a prior restraint against publication. PEN and its members believe that the CDA has ominous implications for the entire craft of writing and publishing, which relies increasingly on the Internet for both information gathering and publishing.

PSINet, Inc. is a leading international provider of Internet access and value-added intranet, security, and web hosting services, with hundreds of points-of-presence throughout the United States and internationally through subsidiaries in Canada, the United Kingdom, and Japan, and through joint-venture partners in the Netherlands and South Korea. Founded in 1989, it is a publicly-traded company with offices in Virginia, New York, California, England, Canada, and Japan. PSINet provides Internet services to more than 18,000 businesses with approximately 2,500,000 individuals who access the PSINet network daily. PSINet also carries the traffic of some 25 smaller United States Internet service providers on a wholesale basis.

Because it does not want to censor its customers' Internet transmissions and because it firmly believes that its customers have a right of privacy in those transmissions, PSINet will not monitor its subscribers' communications or transmissions on the Internet. Moreover, despite its considerable technical sophistication, PSINet does not have the technical or logistical capability routinely to monitor and screen the millions of domestic and international transmissions of its customers and their customers and employees — not to mention the "blind" transmissions of other ISPs to whom the PSINet network is

linked — to determine whether any of those transmissions might be "indecent." The additional complications presented by the CDA's monitoring requirements with respect to the communications that PSINet carries from foreign points of origin and in foreign languages make the statute's defenses meaningless for PSINet.

Eric S. Raymond is the co-founder and a member of the Board of Chester County InterLink (CCIL), a volunteer-run nonprofit organization started in 1993 that provides community networking and Internet access for over two thousand users in Chester County, Pennsylvania. Its mission is to support access by poor, disadvantaged, elderly, and minority residents of Chester County who traditionally either have been financially unable, or lacked the background, education, and confidence, to take advantage of commercial Internet and computer bulletin board services. CCIL runs active community-outreach and educational programs designed to assist ordinary people in taking advantage of the new electronic media. *See http://www.ccil.org:80/~esr* (Exhibit 45).

Mr. Raymond believes that the CDA is a death warrant for CCIL. Under it, any person displeased by any of the content its users offer could find it all too easy to instigate prosecution of CCIL itself under the vague "indecency" language. CCIL does not command the resources needed to conduct the elaborate self-censorship required by the CDA's purported defenses, nor to defend itself against prosecution. The drain on CCIL's volunteer time required even to attempt to filter the entire Internet would cripple every educational and support program it runs. Moreover, Mr. Raymond fears that the CDA's overbroad indecency provisions effectively require content-based censorship and would prohibit CCIL from carrying information for teenagers on such issues as safe sex, AIDS prevention, abortion, or alternatives to abortion.

Don Rittner is the publisher of ***The MESH — Inside Cyberspace***, a Web version of a monthly magazine covering the Internet. *See http://www.themesh.com:80/meshinfo.html* (Exhibit

46). Since enactment of the CDA, Mr. Rittner has felt compelled to remove several columns from *The MESH* Web page out of fear of criminal prosecution. He believes that the CDA has limited his choice of content for his magazine, thus infringing on his First Amendment right to free expression. He further believes that it is unclear under the terms of the CDA precisely what speech he must remove or exclude to avoid prosecution and that, in order to reconcile this lack of clarity, he must take an overbroad view of materials that might be deemed "indecent" or "patently offensive."

The **Sexuality Information and Education Council of the United States (SIECUS)** is a national nonprofit organization incorporated in 1964 that develops, collects, disseminates, and promotes comprehensive information about sexuality, and advocates the rights of individuals to make responsible sexual choices. *See http://www.siecus.org/* (Exhibit 47). It believes that sexually explicit speech and visual materials are indispensable elements of sexuality education, and that the CDA may restrict the appropriate professional use of such materials by sexuality educators, therapists, and researchers. *See id.* Betsy Wacker is the *amicus* contact person for SIECUS.

Dr. Lloyd K. Stires is a social psychologist and professor in the Psychology Department at the Indiana University of Pennsylvania. His primary academic research deals with the content and effects of pornography. In the context of his work, he subscribes to several Internet discussion groups that sometimes involve frank discussions of human sexuality, as well as censorship issues and First Amendment rights. He also teaches an annual seminar at the university entitled "Pornography: Critical, Behavioral and Legal Approaches." He sends announcements regarding the seminar to students and also forwards to them information downloaded from the Internet that is relevant to the course and that could be deemed "indecent" or "patently offensive." He is concerned that this academic activity may expose him to prosecution under the CDA. Further, he is concerned that the CDA will chill his ability to conduct his research on the Internet, by forcing the removal of materials that

are "indecent" or "patently offensive" according to some community standards but which form a vital part of his studies and teaching.

Peter J. Swanson is a Ph.D. candidate in Electrical Engineering and Computer Science at the University of Michigan and a member of the University's Advanced Technology Laboratory. He authors a Web site that includes a page dedicated to a discussion of *United States v. Baker*, 890 F. Supp. 1375 (E.D. Mich. 1995). *See http://ai.eecs.umich.edu/people/pjswan/* (Exhibit 48).

The *Baker* case concerned a United States prosecution under 18 U.S.C. § 875(c) for threats transmitted via e-mail over the Internet, including stories written by the defendant, a student at the University of Michigan. The *Baker* Web page is typically accessed by scholars interested in the legal and social implications of the case and by students of philosophy and composition who use the case as a discussion topic. While the stories and e-mail messages themselves are unquestionably offensive, they are so central to an understanding of the case that the United States District Court for the Eastern District of Michigan quoted them extensively in its opinion dismissing the indictment. *See Baker*, 890 F. Supp. at 1387-90. The text of that opinion is reproduced on Mr. Swanson's Web page. *See* Exhibit 48. However, since enactment of the CDA, Mr. Swanson has felt compelled to remove from that page the full text of the stories, despite his conviction that it is important to the public interest for those interested in the controversy to understand its underpinnings. *See id.* Fear of the strong penalties imposed by the CDA also has forced him to refuse legitimate requests for the material by some who access the *Baker* page because he is unable to confirm the age of the requesters — a problem exacerbated by the fact that he is part of a university system attended by minors.

Kirsti Thomas is a Reference and Technical Services Librarian at Seattle Pacific University in Seattle, Washington. Users of the library include undergraduates (including many

under the age of 18), children of graduate students, faculty members and their children, and members of the outside community, including minors.

Ms. Thomas believes that the CDA has a serious detrimental effect on how she fulfills her duties as a librarian serving these varied constituencies. The Internet is a major reference source within the field of library science, on which Ms. Thomas relies heavily in providing the library's patrons with rapid access to current and sometimes controversial information. Ms. Thomas has a reasonable fear of prosecution under the CDA for simply fulfilling those duties. For example, by showing a 17-year old nursing student *online* information on AIDS prevention and safe sex education, using such sources as a Web site, mailing list, discussion groups, or even access to LEXIS/NEXIS, she could be transmitting "indecent" or "patently offensive" information to a minor. Ironically, Ms. Thomas may show identical materials located in print to the same student without any legal repercussions at all. She believes this contrast demonstrates that the CDA is not narrowly tailored to achieve the government's stated compelling interest of preventing minors from receiving "indecent" or "patently offensive" information.

Additionally, consistent with her academic concentration in German culture and civilization, Ms. Thomas maintains a home page that includes a link to the German weekly news magazine *Der Spiegel* (which is carried in print form in most major libraries in the United States). *See http://paul.spu.edu/~kst/art.html* (Exhibit 49). The covers of *Der Spiegel*, which appear on her home page, frequently show naked breasts, which, while not offensive to German sensibilities, is not generally accepted mainstream journalism in this country. She is concerned that under the CDA she could be prosecuted if a minor accesses her home page and views or links to *Der Spiegel*. Ms. Thomas also believes that the CDA deprives her of her First Amendment right to post artwork on her home page that some might find "indecent" or "patently offensive." *See id.*

Overriding these specific concerns is Ms. Thomas's belief as a librarian and an educator that the Internet is an international source of information that is unlike any medium known before and that possesses unlimited educational and social value.

Web Communications is a Web hosting service that provides a self-service online facility used by its customers to post Web sites on the Internet. *See http://www.webcom.com/* (Exhibit 50). It services more than 1650 Web sites, and that number grows daily. The driving purpose of Web Communications is its desire to make available at a grassroots level the positive social benefits of the free exchange of ideas and expression among individuals that the Internet makes possible.

Web Communications is concerned that if one of its customers places on the Internet a communication that could be deemed "indecent" or "patently offensive" and accordingly unlawful under the CDA, then it too could be in danger of prosecution. The large and growing number of Web Communications customers posting information on their Web sites makes monitoring of those sites impossible as a technical and financial matter. But under the CDA, if it were brought to the attention of Web Communications that one of its customers was placing "indecent" or "patently offensive" speech on the Internet, it would be Web Communications' responsibility to remove it. That burden imposed by the CDA is unworkable and runs counter to' mission to provide open access to the Internet. Web Communications believes this mission is protected under the First Amendment. Web Communications' president and *amicus* contact person is Chris Schefler.

Miryam Ehrlich Williamson is a freelance technical journalist who has written a medical book concerning a neurochemical disorder called fibromyalgia. She conducted all the research for the book on the Internet — the only means available to her for locating all the information she required. Over the Internet, she interviewed hundreds of people who have fibromyalgia to determine their concerns and opinions and to

discuss the as-yet unknown cause and cure for the disorder. In the course of this research, she participated in discussions on the Internet that included references to bowel movements, menstruation, urinary tract infections, sexual relations, and contraception. These discussions included use of specific terminology and descriptions that were sometimes graphic but always central to the symptoms of the disorder and the struggle to live with it. Ms. Williamson believes that some might consider the discussions "indecent."

Under the CDA, research of the sort that Ms. Williamson conducted may now be impossible. The threat of prosecution posed by the CDA prohibits her from conducting unfettered follow-up interviews on fibromyalgia and from conducting research on that or similar medical disorders or diseases that might implicate "sexual or excretory activities or organs" and that might include communications considered by some to be "indecent" because other authors of speech on the Internet that she would need to access may themselves be chilled by the threat of prosecution. Ms. Williamson has written an essay posted on the Internet regarding the restrictions that the CDA has placed on her work. *See http://www.privatel.com/democracy24/essay/wmson.html/* (Exhibit 51).